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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
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## **Centers for Medicare & Medicaid Services**

### **42 CFR Parts 412**

**[CMS-1588-F2]**

**RIN 0938-AR12**

### **Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers; Correcting Amendment**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This document corrects technical errors in the regulations text of the final rule that appeared in the August 31, 2012 **Federal Register** entitled "Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates; Hospitals' Resident Caps for Graduate Medical Education Payment Purposes; Quality Reporting Requirements for Specific Providers and for Ambulatory Surgical Centers" (hereinafter referred to as the FY 2013 IPPS/LTCH PPS final rule).

**DATES:** Effective Date: This correcting amendment is effective [insert date of filing for public inspection].

Applicability Date: The provisions of this correcting amendment are applicable October 1, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Tzvi Hefter, (410) 786-4487.

**SUPPLEMENTARY INFORMATION:****I. Background and Summary of Errors**

In the FY 2013 Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System final rule (hereinafter referred to as the FY 2013 IPPS/LTCH PPS final rule) (FR Doc. 2012-19079 of August 31, 2012 (77 FR 53258)), there were several typographical and technical errors in the regulations text that are identified and corrected in this correcting amendment. The provisions in this correcting amendment apply to long-term care hospital (LTCH) prospective payment system (PPS) payments.

In finalizing the regulations text changes for the FY 2013 LTCH PPS provisions (77 FR 53680), we made the following errors:

- In §412.534(h)(6), we inadvertently omitted regulations text that specified our methodology for determining the percentage of discharges during a LTCH's or satellite facility's cost reporting period beginning on or after July 1, 2012 and before October 1, 2012 that will not be counted towards the 25-percent threshold during such cost reporting period.

- In §412.536(a)(3)(i)--

++ We inadvertently omitted regulations text that specified the discharges to which the 25-percent payment adjustment threshold policy applies for LTCHs with cost reporting periods beginning on or after July 1, 2012 and before October 1, 2012; and

++ We made an error in the timeframe during which the 25-percent payment adjustment threshold policy will not apply for certain LTCHs (that is, those LTCHs with a cost reporting period beginning on or after July 1, 2012 and before October 1, 2012).

- In §412.536(a)(3)(ii), we made an error in citing the timeframe during which the 25-percent payment adjustment threshold policy is in effect for certain LTCHs (that is, those LTCHs with a cost reporting period beginning on or after July 1, 2012 and before October 1, 2012), as well as an error in the timeframe during which discharges occurring during such LTCHs' cost reporting periods will not be counted towards the 25-percent threshold.

We are correcting these regulations text errors to ensure that the regulations text reflects the finalized 25-percent payment adjustment threshold policy set forth in the preamble of the final rule (77 FR 53483 through 53486).

## **II. Waiver of Proposed Rulemaking and Delay in the Effective Date**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary

finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

We find that there is good cause to waive both the notice and comment and delayed effective date requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest. We believe it is in the public interest for our regulation text to accurately reflect the policy on the 25-percent payment adjustment threshold which was adopted in the FY 2013 IPPS/LTCH PPS final rule. Therefore delaying the effective date of these corrections would be contrary to the public interest. Furthermore, such procedures would be unnecessary, as we are not altering the policies that were already subject to comment and finalized in the FY 2013 IPPS/LTCH PPS final rule. As indicated previously, this correcting amendment corrects technical and typographical errors in the regulations text of the FY 2013 IPPS/LTCH PPS final rule and does not make substantive changes to the policies or payment methodologies that were adopted in the final rule. As a result, this correcting amendment is intended to ensure that the regulations text accurately reflects the policies adopted in the FY 2013 IPPS/LTCH PPS final rule. Therefore, for the reasons set forth previously, we believe we have good cause to waive the notice and comment and effective date requirements.



## **List of Subjects for 42 CFR Part 412**

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

As noted in section I. of this correcting amendment, the Centers for Medicare & Medicaid Services is making the following correcting amendments to 42 CFR part 412:

### **PART 412--PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES**

1. The authority citation for Part 412 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), and sec. 124 of Pub. L. 106-113 (113 Stat. 1501A-332).

2. Amend §412.534 as follows:

- A. Redesignating paragraph (h)(6)(ii) as paragraph (h)(6)(iii).
- B. Adding a new paragraph (h)(6)(ii).

The addition reads as follows:

**§ 412.534 Special payment provisions for long-term care hospitals within hospitals and satellites of long-term care hospitals.**

\* \* \* \* \*

(h) \* \* \*

(6) \* \* \*

(ii) In determining whether the percentage of discharges during a long-term care hospital's or satellite facility's cost reporting period beginning on or after July 1, 2012 and

before October 1, 2012 exceeds the 25-percent threshold, those discharges occurring on or after October 1, 2012 and before the beginning of the hospital's or satellite facility's next cost reporting period will not be counted towards that threshold.

\* \* \* \* \*

#### **§412.536 [Amend]**

3. Amend §412.536 as follows:

A. Revising paragraph (a)(3)(i).

B. In paragraph (a)(3)(ii)--

(i) The phrase "before July 1, 2013" is removed and the phrase "before October 1, 2012" is added in its place.

(ii) The phrase "before October 1, 2013," is removed and the phrase "before the beginning of the hospital's next cost reporting period," is added in its place.

The revision reads as follows:

**§ 412.536 Special payment provisions for long-term care hospitals and satellites of long-term care hospitals that discharged Medicare patients admitted from a hospital not located in the same building or on the same campus as the long-term care hospital or satellite of the long-term care hospital.**

(a) \* \* \*

(3) \* \* \*

(i) Payments to long-term care hospitals described in paragraph (a)(1)(iv) of this section are determined using the methodology specified in either paragraph (b)(1) or paragraph (b)(2) of this section, for discharges occurring prior to October 1, 2012 during the hospital's cost reporting period beginning on or after July 1, 2012 and before

October 1, 2012. Such policies will not be applied to the discharges occurring on or after October 1, 2012 and before the beginning of the hospital's next cost reporting period.

\* \* \* \* \*



(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare--Hospital Insurance; and Program No. 93.774, Medicare--Supplementary Medical Insurance Program)

Dated: October 10, 2012

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**Oliver Potts,**

Deputy Executive Secretary to the

Department,

Department of Health and Human

Services.

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